

House Bill 1524

By: Representative Stephenson of the 92nd

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to the regulation of controlled substances, so as to add certain drugs to the Schedule V list of controlled substances; to provide that ephedrine, pseudoephedrine, phenylpropanolamine and related substances shall be controlled substances; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to the regulation of controlled substances, is amended by revising paragraph (2) of Code Section 16-13-29, relating to schedule V substances, as follows:

"(2) Ephedrine, pseudoephedrine, or phenylpropanolamine, or any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts of isomers, alone or in a mixture;"

SECTION 2.

Said article is further amended by revising Code Section 16-13-29.2, relating to the authority for exemptions of over-the-counter Schedule V controlled substances, as follows:

16-13-29.2.

(a) The Georgia State Board of Pharmacy shall have the authority to exempt and control the sale of Schedule V controlled substances by rule which shall allow the sale of such substances without the need for issuance of a prescription from a medical practitioner and shall require such substances to be sold only in a pharmacy when such substances are sold without a prescription. Such substances shall be known as Exempt Over-the-Counter (OTC) Schedule V Controlled Substances.

(b) In addition to any other authority provided by law, the Georgia State Board of Pharmacy shall be authorized to and shall require that when ephedrine, pseudoephedrine, or phenylpropanolamine or any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts of isomers, alone or in a mixture, is dispensed or sold as an Exempt Over-the-Counter (OTC) Schedule V Controlled Substance, the licensed pharmacy shall report such sale to the board or its designated agent in the manner and frequency provided in the board rules. The board or its designated agent shall be authorized to maintain a data base of such sales. Information from the data base shall be considered confidential, but shall be disclosed to law enforcement agencies as provided in federal law. The board is further authorized to charge reasonable fees to defray expenses incurred in maintaining any records or forms necessitated by this subsection or otherwise administering any other provisions of this subsection.

SECTION 3.

Said article is further amended by revising Code Section 16-13-30.3, relating to possession of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine and restrictions on sales of products containing pseudoephedrine, as follows:

"16-13-30.3.

(a) As used in this Code section, the term:

(1) 'Ephedrine,' 'pseudoephedrine,' or 'phenylpropanolamine' means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts of isomers, alone or in a mixture.

(2) 'Personal use' means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine in quantities at or below that specified in subsection (b) of this Code section, and includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

~~(3) 'Retail distributor' means a grocery store, general merchandise store, drugstore, convenience store, or other related entity, the activities of which involve the distribution of ephedrine, pseudoephedrine, or phenylpropanolamine products.~~

(b)(1) It is unlawful for any person, other than a person or entity described in paragraph (22), (28), (29), (30), or (33), or (41) of Code Section 26-4-5 ~~or a retail distributor~~, to knowingly possess any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine in an amount which exceeds 300 pills, tablets, gelcaps, capsules, or other individual units or more than 9 grams of ephedrine, pseudoephedrine, or

phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.

(2) It shall be unlawful for any person to possess any amount of a substance set forth in this Code section with the intent to manufacture amphetamine or methamphetamine unless licensed as a manufacturer.

(3) Any person who violates the provisions of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

(b.1)(1) Products whose sole active ingredient is pseudoephedrine may be offered for retail sale only if sold in blister packaging. Such products may not be offered for retail sale by self-service but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by ~~a retail store~~ an employee or agent of a licensed pharmacy.

(2) No person shall deliver in any single over the counter sale more than three packages of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number of packages that contain a combined total of more than nine grams of pseudoephedrine or its base, salts, optical isomers, or salts of its optical isomers.

(3) It shall be unlawful ~~for a retail distributor~~ to purchase any product containing pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor licensed by the Georgia State Board of Pharmacy.

(4) ~~This subsection shall not apply to:~~

~~(A) Pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under 12 years of age according to label instructions; and~~

~~(B) Products that the Georgia State Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.~~

~~(5)~~ This subsection shall preempt all local ordinances or regulations governing the retail sale of over the counter products containing pseudoephedrine by a retail business except such local ordinances or regulations that existed on or before December 31, 2004. Effective January 1, 2006, this subsection shall preempt all local ordinances.

~~(6)(A)~~ (5)(A) Except as otherwise provided herein, it shall be unlawful for any person knowingly to violate any prohibition contained in paragraph (1), (2), or (3) of this subsection.

(B) Any person convicted of a violation of paragraph (1) or (2) of this subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be punished by a fine

of not more than \$500.00 and, upon the second or subsequent conviction, shall be punished by not more than six months' imprisonment or a fine of not more than \$1,000.00, or both.

(C) Any person convicted of a violation of paragraph (3) of this subsection shall, upon the first conviction, be guilty of a misdemeanor and, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

~~(D) It shall be a defense to a prosecution of a retail business or owner or operator thereof for violation of paragraph (1) or (2) of this subsection that, at the time of the alleged violation, all of the employees of the retail business had completed training under Georgia Meth Watch, the retail business was in compliance with Georgia Meth Watch, and the defendant did not knowingly, willfully, or intentionally violate paragraph (1) or (2) of this subsection. For purposes of this subsection only, the term 'Georgia Meth Watch' shall mean that program entitled 'Georgia Meth Watch' or similar program which has been promulgated, approved, and distributed by the Georgia Council on Substance Abuse.~~

~~(7)~~ (6) Except as otherwise provided in this subsection, the Georgia State Board of Pharmacy may adopt reasonable rules and regulations to effectuate the provisions of this subsection. The board is further authorized to charge reasonable fees to defray expenses incurred in maintaining any records or forms necessitated by this subsection or otherwise administering any other provisions of this subsection.

(c) ~~This Code section shall not apply to:~~

~~(1) Pediatric products primarily intended for administration to children under 12 years of age, according to label instructions, either:~~

~~(A) In solid dosage form whose recommended dosage, according to label instructions, does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per individual dosage unit; or~~

~~(B) In liquid form whose recommended dosage, according to label instructions, does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;~~

~~(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce; or~~

~~(3) Products that the Georgia State Board of Pharmacy, upon application of a manufacturer, exempts by rule from this Code section because the product has been formulated in such a way as to prevent effectively the conversion of the active ingredient into methamphetamine or its salts or precursors.~~

133 (d) Except as authorized by this article, it is unlawful for any person to possess, have under
134 his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or
135 possess with intent to distribute any substance containing any amounts of ephedrine,
136 pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of
137 optical isomers which have been altered from their original condition so as to be powdered,
138 liquefied, or crushed. This subsection shall not apply to any of the substances identified
139 within this subsection which are possessed or altered for a legitimate medical purpose.
140 Any person who violates this subsection shall be guilty of a felony and, upon conviction
141 thereof, shall be punished by imprisonment for not less than one year nor more than ten
142 years."

143 **SECTION 4.**

144 This Act shall become effective July 1, 2010, and shall apply to offenses committed on or
145 after such date.

146 **SECTION 5.**

147 All laws and parts of laws in conflict with this Act are repealed.